

John Buchanan, Assistant Chief  
Phoenix Police Department  
620 W. Washington St.  
Phoenix, AZ 85003

Date: June 8, 2004

Dear Chief,

Recently PLEA received a copy of the administrative investigation (03-42) involving Assistant Chief Sil Ontiveros and his use of "pepper spray". A lot of discussion has occurred regarding this situation as your employees our members call us daily about this incident. When I read the investigation I had some questions that hopefully you can answer so we can put this whole incident to "bed", even though many may disagree on how it was handled or not handled.

The first question is why Chief Ontiveros wasn't administratively investigated for "unreasonable force" or "excessive force" as he used pepper spray against an individual who was "asleep" in a dumpster. Ops 1.5.3.A "It is the policy of the Phoenix Police Department to use a reasonable amount of force to conduct the lawful public safety activities of the department."

The second question is why Chief Ontiveros wasn't administratively investigated for his "failure to advise a supervisor" when he deployed pepper spray, a use of force against an individual. Ops 1.5.3.D (1) "Any time there is an injury or an alleged injury as a result of force used by department personnel, employees will: (third bullet point) Immediately notify a supervisor." The definition of an "employee" per Ops 1.3.14 is "Both sworn police officers and non-sworn personnel of the department." and Ops 2.2.2.E (2) "Employees at every level of rank will keep their supervisor informed of any unusual activity, situation, or course of action, and of the day-by-day accomplishment of their assigned duties".

The third question is why wasn't a use of force report generated or any other document that would have documented the incident where a citizen needed medical treatment. Ops 1.5 6.A General Reporting Guidelines, Chemical Agents.

The fourth question is why wasn't there a criminal report generated. Regardless of the varying opinions, a criminal investigation should have been done so the "police" could have interviewed all participants and determined the facts as to what occurred and the intent and culpability of those involved. (One will never know ones intent unless that

person/s is asked the question). Title 13, 13-1203 A.1 "A person commits assault by: Intentionally, knowingly or recklessly causing any physical injury to a person". Furthermore Title 13, 13-1204.A. "A person commits aggravated assault if the person commits assault as defined in section 13-1203 under any of the following circumstances. Section 8 "If the person commits an assault while the victim is bound or otherwise physically restrained or while the victim's capacity to resist is substantially impaired." To protect the integrity of this department and all who work here an outside review of this investigation (i.e. city prosecutor or county attorney) would go along way in quieting those citizens who chastise us with "who's policing the police". It's called TRUST whether from the citizens we serve or the people who work here.

Lastly per Title 13, 13-107.B.1 (Time Limitations) "For a class 2 through a class 6 felony, seven years", or .2 "For a misdemeanor, one year." As a citizen of Phoenix and member of this police department I am asking that this incident be criminally investigated, documented and be reviewed by the proper legal authorities for a final disposition.

On behalf of the Phoenix Law Enforcement Association and the officers we represent I request the above questions be answered in writing. I would also like the names of those people who had involvement in the decision/s on how this was handled at both the administrative and criminal levels. I thank you ahead of time for your efforts.

Sincerely,

Daniel Boyd  
Chairman of the Board

Cc: Jack Harris, Police Chief